

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 63 OF 2000
WITH CIVIL APPLICATION NO. 8581 OF 2000

Shri Baban Dinkar Shewale
and ors. ..Appellants

Vs.

Shri Dnyaneshwar Kisan More
and ors. ..Respondents

Mr. Nitin P. Deshpande for appellants.

CORAM: B.H. MARLAPALLE, J.

Date : April 18, 2007.

P.C.:

1. Heard Mr. Nitin Deshpande the learned counsel

for the appellants who were impleaded as defendant

nos.3 to 5 in Regular Civil Suit No. 957 of 1984.

The said suit was filed by the present respondent

nos.1 to 4 for cancellation of the sale deed dated

19/2/1970 and for possession of the land bearing

Survey No. 34/1A/2/2 admeasuring 1 Acre 20 Gunthas of

village Manjari, Taluka Haveli, District Pune. It was

contended by the plaintiffs that the suit property

belonged to Shri Narayan Purushottam Sugandhi and

their deceased father Kisanrao More was the tenant on
 the said land and he was in cultivation of the said
 land as on 1/4/1957. He had initiated proceedings
 under Section 32-G of the Bombay Tenancy and
 Agricultural Lands Act, 1948 (Bombay Tenancy Act for
 short). However, in the year 1966 Kisanrao died while
 the proceedings were pending. Consequently all the
 LRs of Kisanrao i.e. the plaintiffs as well as
 defendant nos.1 and 2 became the owners of the suit
 land. Plaintiff Nos.1 and 2 were minors at the
 relevant time and in the record of right, the name of
 defendant No.2 the eldest brother of the plaintiffs
 and as a Karta of the family was recorded in respect
 of the suit land. The defendants filed their Written
 Statement at Exh. 15 and stated that the proceedings
 under Section 32-G were dropped as per the order dated
 30/9/1967 and by sale deed dated 21/11/1967 the suit
 land was purchased by the defendant no.2 and it was in
 his possession as his self acquired property.
 Consequently, the plaintiffs cannot claim any share in
 the suit property. The suit property was sold to
 defendant nos.3 to 5 by a sale deed dated 19/2/1970
 and the said sale deed was valid as the land was sold
 for the bonafide requirement and legal necessity of

the family.

2. On the assessment of the evidence adduced by

the respective parties, the trial court held that the plaintiffs had proved the suit property being their ancestral property, the defendant nos.3 to 5 could not prove that defendant no.2 executed the sale deed of the suit property for legal necessity, the plaintiffs were entitled only to the extent of their share in the suit property, the sale deed dated 19/2/1970 was not binding on the plaintiffs and they were entitled for permanent injunction to the extent of their share. At the same time, it was held that defendant nos.3 to 5 had acquired undivided interest of their vendors i.e. defendant nos.1 and 2 in the suit property and, therefore, were entitled to ascertain their interest by partition and also claim undivided share of plaintiff no.1 and defendant nos.3 and 4. The decree was passed only in favour of plaintiff no.2 and it was recorded that the plaintiff nos. 1, 3 and 4 had failed to exercise their right for claiming possession of their undivided share or for cancellation of the sale deed within a period of limitation.

3. The decree passed by the trial court was challenged in Civil Appeal No. 391 of 1991 by the original plaintiffs and in Civil Appeal No. 405 of 1991 by the original defendant nos.3 to 5. Both the appeals came to be decided by a common judgment dated 12/7/1999 by the learned V Additional District Judge at Pune. The appeal filed by the plaintiffs came to be dismissed, whereas the appeal filed by the defendant nos.3 to 5 has been partly allowed. The

Judgment and Decree passed by the trial court is

substituted by the following decree:-

"(a) It is hereby declared that the sale deed of the suit field executed by defendant Nos.1 and 2 in favour of father of defendant Nos. 3 to 5 is not binding upon plaintiff No.2 Gangaram Kisan More to the extent of his share in the suit field.

(b) The plaintiff No.2 Gangaram Kisan More is at liberty to file suit for partition and separate possession of his share in the suit field against the defendant and other co-sharers if he wanted."

4. Mr. Deshpande the learned counsel for the appellants submitted that the suit property being a self acquired property of defendant no.2, the plaintiff no.2 did not have any right to claim his share in the same and challenge the sale deed signed in favour of the appellants by defendant no.2 alienating the suit land in their favour. Admittedly, the defendant no.2 was the eldest brother and became Karta of the family after the demise of the plaintiffs' father Kisanrao. No doubt, the proceedings under Section 32-G were dropped as per the order dated 30/9/1967. However, as per the evidence of Narayan Sugandhi, as adduced before the trial court, the land bearing Survey No. 34 admeasuring 2.26 Ares was purchased by defendant no.2 on 21/11/1967. He deposed that Kisan died when the proceedings under Section 32-G of the Bombay Tenancy Act were pending and the proceedings were dropped because he arrived at a settlement with defendant no.2 by offering him 2 acres 26 gunthas as a Karta of the joint family. The price was fixed at Rs.800/- and he produced the certified copy of mutation entry no. 4707 at Exh.55 in which it was mentioned that the

possession was handed over to the landlord by defendant no.2 on 30/1/1968. He also produced a certified copy of the order dated 21/11/1967 (Exh.56) passed in Tenancy Case No.131 of 1967. The said application was filed under Section 32F read with Section 32P of the Bombay Tenancy Act and the Tahsildar had directed to dispose of the land under Section 32P of the Bombay Tenancy Act. Exhibit 57 was a certified copy of the order in Tenancy Case No.59/67 and the said case was filed by the landlord against the tenant-defendant no.2 and by the said order the tenant was directed to hand over possession of the land to the landlord. This evidence, therefore, proved that defendant no.2 succeeded as Karta of the family and the suit land was, therefore, shown in his name in the record of rights. There is no dispute that he had no other independent income, except cultivation of the tenancy land which was under cultivation of his late father. It was not his case that he had any other source of income like business or employment etc. and thus the money spent on purchase of the land from the landlord was from the joint family income. Both the courts below were, therefore, right in recording the concurrent finding

that the suit land was a joint family property, though it was standing in the name of defendant no.2 and, therefore, plaintiff no.2 had the right to claim his share in the same. The courts below have also protected the rights of the defendant nos.3 to 5 so as to satisfy the sale deed from the shares of defendant nos.1 and 2.

5. Hence, no substantial question of law arises for the consideration of this court in this second appeal and the decree passed by the Lower Appellate Court required to be confirmed.

6. Hence the Second Appeal is dismissed in limine and the decree passed by the Lower Appellate Court is hereby confirmed.

7. Civil Application No. 8581 of 2000 does not survive and the same shall stand disposed as such.

(B.H. Marlapalle,J.)